IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1364 OF 2002

Mahananda Ashok Umbare
residing at 581, West Mangalwar Peth,
Solapur. ...Petitioner.
V/s.
1.Ashok Chandrahar Umbare
2.The State of Maharashtra ...Respondents.
residing at A/3, Abhishek Nagar,
Murarji Peth, Poona Road,
Solapur.

Shri S.G.Kudale for the Petitioner.
Shri M.A.Utgikar for the Respondent No.1.
Shri More, A.P.P. for the Respondent No.2-State.

CORAM: S.R.Dongaonkar,J.
DATE : 21st March, 2006.

P.C.:

1. Heard Mr.Kudale for the Petitioner and Shri Utgikar for the Respondent No.1.

2. **Rule**. Respondent No.1 waives service. Heard forthwith.

3. The Petitioner has preferred this Petition under Article 227 of the Constitution of India and under Section 482 of the Code of Criminal Procedure and has challenged the order passed by the I Ad Hoc Additional Sessions Judge, Solapur in Criminal Revision Application No.226 of 2001 dated 18th June, 2002 in which the learned Sessions Judge

has reduced the maintenance of the Petitioner which was enhanced in Criminal Miscellaneous Application No.476 of 1999 from Rs.400/- to Rs.1,500/- by reducing the same to Rs.1200/- per month.

4. The facts not in dispute are that the Petitioner had preferred an application under Section 125 of the Code of Criminal Procedure bearing Criminal Miscellaneous Application No.181 of 1989 and the Respondent No.1 herein was directed to make the monthly maintenance at the rate of Rs.400/- per month.

5. The Petitioner then preferred an application under Section 127 of the Code of Criminal Procedure for enhancement of maintenance bearing Criminal Miscellaneous Application No.476 of 1999, which was allowed by order dated 04.08.2001 and the amount of maintenance was increased to Rs.1500/- per month from the date of application, i.e. 3rd December, 1999 and to pay the Petitioner herein, Rs.1500/- towards the costs of litigation.

6. A Revision was preferred against this order and the learned Additional Sessions Judge, Solapur in Criminal Revision Application No.226 of 2001, by the order dated 18th June, 2002, reduced that amount to Rs.1200/- per

month. It was directed that the arrears of maintenance should be paid or deposited by the revision applicant within two months from the date of this order.

7. While challenging this order, Shri Kudale, the learned counsel appearing for the Petitioner, has submitted that the order of the learned Sessions Judge is incorrect in as much as there was no legal point or objection to sustain this order by taking me through the reasons recorded by the learned Magistrate while enhancing the amount of maintenance, particularly paragraph 7 to 15. It is submitted by him that the Respondent-husband has sufficient salary as well as income from agricultural lands to pay maintenance of Rs.1500/- per month. Because of increase in day-to-day requirements, expenditure, the Petitioner is entitled for an amount of Rs.1500/- towards the maintenance.

8. Shri Utgikar, the learned counsel for the Respondent No.1, has opposed this contention, saying that the reasons given by the learned Sessions Judge to reduce the amount of maintenance are feasible and discretion exercised by the learned Sessions Judge should not be interfered.

9. On perusal of the record in particular, the fact

that the learned Magistrate has recorded sufficient reasons to come to the findings that the amount of maintenance should be increased to Rs.1500/- per month and considering the fact that the Respondent-husband is in service in bank and has sufficient means to pay this much amount of maintenance which is normally required by the Petitioner. In the present days, amount of Rs.1200/- do seem, reasonable in the circumstances of the case. Further, factual aspects can not be considered in this matter like one in appeal. Merely because there is reduction, to some extent, in amount of maintenance, this factual aspect can not be reappreciated again. I am not inclined to allow this Petition. It requires to be rejected.

10. However, when asked to the learned counsel, I was told that there was no stay to the order of the learned Sessions Judge. It is also not clear from the record that the Respondent No.1 is paying Rs.1200/- as maintenance as per the order of the learned Sessions Judge. Therefore, while dismissing this Petition, I direct that the amount of arrears, as calculated as per the order of the learned Sessions Judge, be paid or deposited in the lower Court within a period of two months from today.

10. It is needless to state that the Petitioner, if required, can move an application for enhancement of the

maintenance, in future.

(S.R.Dongaonkar, J.)